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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND - HONG KONG 1/

[30 June 1997]

1/ In its concluding observations adopted at the end of the consideration of the report submitted by the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/117) in compliance with a special decision of the Committee, the Committee requested the Government of the United Kingdom to submit a report on the human rights situation in the territory of Hong Kong up to 30 June 1997.

FINAL REPORT BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN RESPECT OF HONG KONG UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Introduction

1. The Committee considered the United Kingdom's supplementary report in respect of Hong Kong under the Covenant on 23 October 1996. In its concluding observations (CCPR/C/79/Add.69), the Committee requested the government of the United Kingdom to submit a further report on the human rights situation in the territory of Hong Kong up to 30 June 1997.

2. This report is submitted in response to that request. It deals first with the Committee's concern with the continued application of the Covenant in Hong Kong after the transfer of sovereignty and in particular with continued reporting under the Covenant in respect of Hong Kong. It then updates the supplementary report on other aspects of the protection of human rights in Hong Kong.

I. CONTINUED APPLICATION OF THE COVENANTS

3. The Committee has, on a number of occasions and most recently in its concluding observations on the supplementary report, made clear that the reporting procedures under article 40 of the Covenant will remain in force after 30 June 1997 and, accordingly, that it expects to continue to receive and review reports submitted in relation to the Hong Kong Special Administrative Region (the HKSAR) after that date. It has expressed its readiness to cooperate fully in working out the necessary modalities.

4. The United Kingdom Government has advised the Government of China through the Sino-British Joint Liaison Group (the JLG) of the Committee's views. The United Kingdom Government believes that the best course, for reasons going wider than the particular question of the HKSAR, will be for China to become a party to both of the Covenants, that is to say, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The United Kingdom Government has taken every opportunity, including through its partners in the European Union and through other countries, to urge that course on the Government of China. It has also continued to raise the subject (and in particular the need for continued reporting in respect of the HKSAR after 30 June 1997) with the Chinese side in the JLG and through other diplomatic channels.

5. In this connection, the United Kingdom Government has urged the Government of China to be flexible in considering how to ensure that reports in respect of the HKSAR are submitted in the period before China becomes a party to the Covenants. Both the Human Rights Committee (as mentioned above) and the Committee on Economic, Social and Cultural Rights have indicated that they are willing to be flexible over the modalities of reporting after 30 June 1997 and are ready to receive reports in respect of Hong Kong either from the People's Republic of China or, if that is preferred, direct from the HKSAR.

6. In February 1997, the Government of China made various public statements that it was actively considering becoming a party to the two Covenants and, in a related development, it has been reported that, on 7 April 1997, the Chinese President, Mr. Jiang Zemin, told the visiting French Defence Minister in Beijing that China would sign the International Covenant on Economic, Social and Cultural Rights before the end of the year. A statement to the same effect was made, also in April 1997, in the proceedings of the United Nations Commission on Human Rights by a member of the Chinese delegation to the Commission. The United Kingdom Government will continue to use all opportunities and channels to pursue with the Government of China the need for a positive response on the issue. These channels will include the JLG meetings, which will continue at least until 1 January 2000 in accordance with annex II to the Joint Declaration.

7. In a statement made on 20 December 1996, the United Kingdom Foreign and Commonwealth Secretary pledged that the United Kingdom Government would take steps to promote future implementation of the Joint Declaration. In conformity with this pledge, the United Kingdom Government undertook to submit reports on Hong Kong to the United Kingdom Parliament at six-monthly intervals. These reports, which will form part of the United Kingdom Government's efforts to step up monitoring and reporting on developments in Hong Kong before and after the handover, will focus on the work of the Sino-British Joint Liaison Group, with special reference to the implementation of the Joint Declaration, and in particular to the protection of human rights and the implementation of the Covenants in Hong Kong. The reports will be public documents and will be readily available to interested parties, including United Nations treaty monitoring bodies. The first will cover the period January to June 1997.

II. PROVISIONAL LEGISLATURE

8. As the Committee is aware, the Government of China has stated that the current Legislative Council, elected in September 1995, will be replaced by a Provisional Legislature from 1 July 1997. The 60 members of the Provisional Legislature were selected in December 1996 by a Selection Committee composed of 400 permanent residents of Hong Kong.

9. The United Kingdom Government has never accepted that there was any need for a Provisional Legislature. It has called upon the Government of China to return to unambiguous implementation of the Joint Declaration, and to ensure that the HKSAR Government takes steps as soon as possible after the handover to replace the Provisional Legislature with a substantive legislature constituted by genuine elections.

10. The Government of China and the Chief Executive (Designate) have undertaken that the Provisional Legislature will be replaced by a properly elected Legislative Council of the HKSAR by 30 June 1998. They have also given the assurance that anyone who meets the relevant statutory qualifications can stand for the election.

III. THE CHINESE PROPOSALS ON THE BILL OF RIGHTS ORDINANCE, THE SOCIETIES ORDINANCE AND THE PUBLIC ORDER ORDINANCE

11. Paragraphs 36 to 40 of the supplementary report noted that the now defunct Preliminary Working Committee had advised the Preparatory Committee for the HKSAR - both these bodies were established by the Government of China - that, in its view, three provisions of the Bill of Rights Ordinance (the BORO) had the effect of giving the BORO a status above all other laws (including, after 1997, the Basic Law) and should be repealed after 30 June 1997. The Preliminary Working Committee had also advised the Preparatory Committee that provisions in six ordinances which had been amended to ensure that they were consistent with the BORO were, as a result of the amendments, inconsistent with the Basic Law and should be restored to their original form. The Societies Ordinance and the Public Order Ordinance were two of those six ordinances.

12. Having considered the Preliminary Working Committee's views, the Preparatory Committee recommended to the Government of China on 1 February 1997 that the three provisions of the BORO referred to by the Preliminary Working Committee should be repealed and that certain of the amendments made to the Societies Ordinance and the Public Order Ordinance, in 1992 and 1995 respectively, to ensure consistency with the BORO should not be adopted as laws of the future Special Administrative Region. On 23 February 1997, despite repeated protests from the United Kingdom Government and the Hong Kong Government, the Standing Committee of the National People's Congress of China endorsed these recommendations.

13. As regards the proposed repeal of the relevant provisions of the BORO, it may be helpful to the Committee to explain briefly the issues involved. The provisions in question are sections 2 (3), 3 and 4.

14. Section 2 (3) reads as follows:

> "(3) In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters."

15. This provision, as its terms clearly indicate, merely identifies one of the factors to be taken into account in the interpretation and application of the ordinance in which it occurs. In identifying that particular factor as a factor which should be so taken into account, it does no more than express a general principle of the common law relating to the interpretation of statutes that have been enacted for the purpose of implementing treaties. The relevant treaty in this particular case is, of course, the Covenant. In relation to any suggestion that section 2 (3) could somehow be at variance with the Basic Law, it will be remembered that article 39 of the Basic Law itself specifically provides for the continued application of the Covenant to Hong Kong after 30 June 1997.

16. Section 3 reads as follows:

> "3.-(1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.
>
> "(2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed."

17. Again, this section merely reflects a general rule of the common law in the field of statutory interpretation, namely, the rule which governs the effect of a later statute upon earlier statutes. This rule is that, where a statute impinges on an earlier statute which is still in force, the earlier statute must thereafter, wherever possible, be construed consistently with the later one; but where there is an inconsistency which makes such a construction impossible, the earlier statute must thereafter be regarded as having been repealed, to the extent of the inconsistency, by the later one. It is simply this rule which section 3 repeats specifically in relation to the effect of the BORO on earlier legislation.

18. Section 4 reads as follows:

> "4. All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong."

19. This provision, too, merely expresses a general rule of the common law in the field of statutory interpretation: in this case, the rule governing the relationship between domestic legislation and any applicable obligation of international law. The rule is that domestic legislation shall, so far as such a construction is possible, be construed so as to permit compliance with any such obligation. Where such a construction is not possible, then, in the common law the provisions of the domestic legislation must take precedence.

20. It will be seen that the rules expressed in section 4 and in the other provisions in question do not give, and do not purport to give, the BORO a status superior to that of other ordinances. Neither the BORO nor any other Hong Kong ordinance has, or can have, any overriding effect in relation to future legislation: nor is either the BORO or any other Hong Kong ordinance "entrenched". What are in effect entrenched, however - but independently of section 4 or any other provision of the BORO - are the substantive rights guaranteed by the Covenant. At present, and up to 1 July 1997, they are entrenched by article VII (5) (Originally article VII (3)) of the Hong Kong Letters Patent: see paragraph 29 of the core document for Hong Kong (HRI/CORE/1/Add.62). After that date they will be entrenched by article 39, read together with articles 8 and 11, of the Basic Law.

21. Accordingly and whatever view the Committee may take about the proposal (which the United Kingdom Government and the Hong Kong Government have made clear that they, for their part, regard as unnecessary and unjustifiable) to repeal the provisions of the BORO that are in question, it will be seen that those provisions in fact do no more than make explicit what are in any event,

and will remain, the relevant rules of the common law. As such, and irrespective of whether the provisions are repealed, these rules will continue to be the ones that will be observed by the courts of the HKSAR in any case where they are applicable.

22. As regards the amendments to the Societies Ordinance and the Public Order Ordinance that are not to be adopted as laws of the HKSAR, the Chief Executive (Designate) of the HKSAR decided in April 1997 that legislation to replace these amendments should be put before the Provisional Legislature for consideration before 1 July 1997 with a view to its being formally enacted on that date. However, in the light of strong views that had been expressed on this matter, in Hong Kong and elsewhere, he embodied his proposals in a public consultation paper. In this consultation process, which ended on 30 April 1997, there was again wide criticism of certain aspects of the proposals, and these were then modified further in a number of respects in draft bills which were submitted to the Provisional Legislature on 17 May 1997.

23. The most significant features of the proposals, as they were put to the Provisional Legislature in those bills, were the following:

(a) Societies will be required to seek registration rather than simply to notify the authorities of their establishment;

(b) "Political bodies" will be prohibited from establishing ties with, or receiving funds from, "foreign political organizations". In the Chief Executive (Designate)'s original proposals this prohibition would have extended to the receipt of funds from individual foreign persons;

(c) Those organizing demonstrations must in effect seek police permission but, in a departure from the Chief Executive (Designate)'s original proposals, the Commissioner of Police will retain the discretion to accept shorter notice than is specified in the Public Order Ordinance where he is reasonably satisfied that earlier notice could not have been given and permission will ordinarily be assumed if the police have not expressly objected; and

(d) "National security" will be one of the grounds on which societies can be refused registration or permission for a demonstration can be refused but, in amplification of the original proposal, "national security" will be clearly defined as relating to the "safeguarding of the territorial integrity and independence" of the People's Republic of China.

24. The draft bills are currently before the Provisional Legislature and are expected to be enacted, substantially as introduced, on 1 July 1997. The United Kingdom Government welcomes the fact that the people of Hong Kong were consulted on this important matter and also welcomes the modifications that have been made to the original proposals to meet some of the concerns which were then expressed. But it remains troubled by elements, even in the modified proposals, which still do not fully meet those concerns and which represent a step backwards from the position established by the amendments enacted by the Hong Kong Legislative Council. Those amendments were made specifically for the purpose, and with the effect, of ensuring that both the

Societies Ordinance and the Public Order Ordinance achieved the proper balance, as required by the Covenant, between respect for the rights and freedoms concerned and the relevant considerations of public order, etc. that are recognized by the Covenant. The Ordinances as so amended are therefore entirely consistent both with the Covenant and, it follows, with the Basic Law. The United Kingdom Government accordingly sees no justification for undoing or replacing the original amendments.

IV. COURT OF FINAL APPEAL

Preparation

25. The Hong Kong Government is finalizing the practical arrangements necessary to ensure that the Court of Final Appeal can start work from 1 July 1997. These include:

(a) Premises: these were completed in early June 1997; and

(b) Court of Final Appeal Rules: a Working Group comprising representatives of the legal profession, the administration and the judiciary is revising the draft Rules prepared by the judiciary. The working group has met 11 times and substantial progress has been made.

Transitional arrangements

26. As a precautionary measure to deal with any cases that might be outstanding immediately before 1 July 1997, the Hong Kong Court of Final Appeal Ordinance (Cap 484) provided that any appeal to the Privy Council for which either the Privy Council or the Hong Kong Court of Appeal has granted conditional, final or special leave but which has not been finally disposed of by the Privy Council on or before 30 June 1997 shall thereafter proceed in the Court of Final Appeal. In practice, however, there are no appeals, or applications for leave to appeal, from the courts of Hong Kong currently pending before the Privy Council.

V. ETHNIC MINORITIES

27. Paragraphs 44 and 45 of the supplementary report set out the position in respect of the "ethnic minorities" as it stood at the date of that report. Since then, however, and in the light of further representations made by members of the ethnic minorities and by others on their behalf, the United Kingdom Government has effected an important change in the legal position in order to meet their concerns. These were, essentially, that since members of the ethnic minorities would have the right of abode in Hong Kong but would not ordinarily be entitled to Chinese nationality, and since they would have British nationality but would not have the right of abode in the United Kingdom, they would be without "full rights" in any country. Accordingly, the United Kingdom Government announced, on 4 February 1997, its intention to introduce legislation which would grant to members of the ethnic minorities the right to register as full British citizens and thereby acquire the right of abode in the United Kingdom. This legislation completed its

passage through the United Kingdom Parliament on 13 March 1997 and came into force, as the British Nationality (Hong Kong) Act 1997, on 19 March 1997. Its principal features are as follows:

(a) It requires successful applicants to have been solely British nationals immediately before 4 February 1997, the date when the decision was announced. Accordingly, a person who makes himself solely a British national by voluntarily renouncing another nationality on or after that date will not qualify;

(b) It requires applicants to be ordinarily resident in Hong Kong;

(c) It confers the right to be registered only on persons who were themselves solely British nationals before 4 February 1997: spouses and children have no special status and must qualify in their own right. But children born on or after 4 February 1997 who are otherwise qualified (i.e. who became, on birth, solely British nationals ordinarily resident in Hong Kong) are eligible to be registered. So also are other persons who become so qualified on or after that date (otherwise than by the voluntary renunciation of another nationality;

(d) It provides for the registration of persons as British citizens to take place as from 1 July 1997.

28. It is estimated that some 8,000 persons, mostly of South Asian origin, will benefit from this legislation. The majority of them are expected to continue living in Hong Kong.

VI. RIGHT OF ABODE IN HONG KONG

29. A large measure of agreement has now been reached between the Governments of the United Kingdom and China in the JLG on the substance of the arrangements after 30 June 1997 for the right of abode in Hong Kong. These arrangements can be summarized as follows:

(a) Chinese citizens will have the right of abode if:

(i) They were born in Hong Kong to a parent who had the right of abode or unconditional stay in Hong Kong at the time of their birth or any time thereafter;

(ii) They have at any time, whether before or after 1 July 1997, ordinarily resided in Hong Kong continuously for not less than seven years;

(iii) They were born outside Hong Kong to a parent who is a Chinese citizen born in Hong Kong or having ordinarily resided in Hong Kong continuously for not less than seven years and also had the right of abode in Hong Kong at the time of their birth;

(b) Persons who are not Chinese citizens will have the right of abode if they have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence, whether before or after the establishment of the HKSAR. Persons born in Hong Kong who are not Chinese citizens and who are under 21 years of age will qualify for the right of abode if one parent had the right of abode in Hong Kong at or since the time of their birth. For the purposes of these arrangements:

(i) The seven-year period of continuous ordinary residence must be immediately before the date on which the persons concerned apply for the right of abode;

(ii) The persons concerned will be required to make a declaration to demonstrate that they have taken Hong Kong as their place of permanent residence. The criteria used in determining whether persons have taken Hong Kong as their place of permanent residence include, for example, whether they have a habitual residence in Hong Kong; whether their principal family members (spouse and minor children) are in Hong Kong; whether they are able to support themselves without assistance from public funds; and whether they have any outstanding tax liabilities or such other grounds as may be relevant to the declaration;

(iii) Persons making the declaration will have to provide the required information to the Immigration Department for assessment;

(iv) Any persons who are not Chinese citizens and who acquire the right of abode but are subsequently absent from Hong Kong for a continuous period of more than 36 months will lose their right of abode. However, they will be given the right to land, enabling them to enter Hong Kong freely and to live, study or work in Hong Kong without any restrictions. After they have completed seven years' residence in Hong Kong, they can reacquire the right of abode if they are able to satisfy the above requirements;

(v) Persons who are temporarily overseas for study or work, etc. will not be considered as absent from Hong Kong for the purpose of counting the period of absence;

(c) Any other persons who, before the establishment of the HKSAR, had the right of abode only in Hong Kong will qualify for right of abode. They will be required to make a declaration to this effect.

30. With regard to returning emigrants (that is, ethnic Chinese Hong Kong residents who have emigrated and hold foreign passports), the following arrangements will apply:

(a) The Standing Committee of China's National People's Congress passed, on 15 May 1996, an "Interpretation of Chinese Nationality Law when

applied in the HKSAR". Under this "Interpretation", all Hong Kong residents of Chinese descent who were born in mainland China or Hong Kong, and others who fulfil the criteria for Chinese nationality laid down in the Chinese Nationality Law, are Chinese citizens. Those who have settled abroad and acquired a foreign nationality will have the option to declare change of nationality to the HKSAR Immigration Department after 30 June 1997. Those who make such a declaration will be treated as foreign nationals, and will enjoy consular protection while in Hong Kong or China. Those who choose not to make such a declaration will be treated as Chinese citizens, irrespective of the travel document they use to enter Hong Kong, but they may use their foreign passports for travelling abroad;

(b) Returning emigrants who choose to remain in Hong Kong as Chinese citizens will retain the right of abode in Hong Kong even if they are absent for long periods;

(c) Those who choose to be treated as foreign nationals will retain the right of abode if:

(i) They are settled, or have returned to settle, in Hong Kong before 1 July 1997; or

(ii) They return to settle in Hong Kong no more than 18 months after 30 June 1997; or

(iii) On the date they return to settle in Hong Kong, they have not lived outside Hong Kong for the immediately preceding continuous period of three years;

(d) Any returning emigrants who lose the right of abode will be given the right to land, enabling them to enter Hong Kong freely and to live, study or work in Hong Kong without any restrictions. After they have completed seven years' residence in Hong Kong, they can reacquire the right of abode if they are able to satisfy the requirements for persons who are not Chinese Citizens.

VII. EASE OF TRAVEL (VISA-FREE ACCESS)

31. Paragraph 49 of the supplementary report referred to the hope of the United Kingdom Government and the Hong Kong Government that other countries would follow the United Kingdom's example in offering visa-free entry to visitors holding HKSAR passports. So far, the following (in addition to the United Kingdom) have announced their intention to grant such visa-free entry: Benin; Canada; Ghana; Kiribati; Maldives; Mauritius; Namibia; Northern Mariana Islands (Saipan); Philippines; Republic of Korea; San Marino; Singapore; South Africa; Sri Lanka; Thailand; Trinidad and Tobago; Turkey; Western Samoa.

VIII. FREEDOM OF EXPRESSION

32. Paragraphs 213-247 of the fourth periodic report and paragraphs 51-57 of the supplementary report described the situation as it obtained at the dates of those reports, with respect to the protection of freedom of expression and related matters such as protection from interference with a person's privacy.

In particular, they described and explained the Hong Kong Government's ongoing review of laws that might infringe the right to freedom of expression. In the course of that review, the Hong Kong Government has examined 53 provisions in 27 ordinances, of which 38 have been amended or repealed and 11 left unaltered as they are considered compatible with the BORO. Of the remaining four, two were to be dealt with by the Crimes (Amendment) Bill (see paragraph 34 below) but were among provisions of that bill that were not passed by the Legislative Council. The two remaining ones have been the subject of public consultation. The issues will need further consideration before any legislative amendment can be proceeded with.

33. Among the measures introduced in respect of freedom of expression was the Official Secrets Ordinance, which was enacted on 4 June 1997. This localizes the United Kingdom Official Secrets Act as applied in Hong Kong. Among other things, it satisfies the requirement of article 23 of the Basic Law that the HKSAR should enact laws to prohibit inter alia, the theft of State secrets.

34. Among the bills that completed their passage through the Legislative Council is another measure which will be of interest to the Committee, namely, a bill to amend Parts I and II of the Crimes Ordinance. The bill - which passed on 24 June - modified the existing provision on sedition to reflect the common law and removed treasonable offences. The amendments are consistent with the Joint Declaration, the BORO and the Covenant. Despite this, the Chief Executive (Designate) has made clear that he sees legislation on treason and sedition to be a matter for the first Legislative Council of the SAR. The amendments may therefore be replaced after 1 July, but would have to be consistent with the Covenant as applied to Hong Kong.

IX. PRIVACY AND THE LAW

35. Paragraphs 54-56 of the supplementary report made reference to a consultation paper on privacy (more precisely, on the regulation of surveillance and of the interception of communications) issued to the public in April 1996 by the Law Reform Commission's Privacy Subcommittee. In mid-December 1996, after the completion of this public consultation, the Commission published its report, "Privacy: Regulating the Interception of Communication". That report concluded that section 33 of the Telecommunication Ordinance and section 13 of the Post Office Ordinance provided insufficient protection against unlawful or arbitrary interference with an individual's right to privacy. In the Commission's view, both the Covenant and the Basic Law required - and the Commission so proposed - that legislation should be put in place to regulate the interception of communications. In particular, the Commission recommended that a judicial warrant system should be introduced in this field. These warrants would, the Commission envisaged, replace the executive warrants currently issued under the Telecommunication Ordinance and the Post Office Ordinance.

36. In late February 1997, the Hong Kong Government itself published its Consultation Paper on the Interception of Communications Bill, setting out proposals based on the Commission's report and seeking the public's views on

them. There is a need for further work on the details of the bill in the light of the consultation process, and this will have to be taken forward by the HKSAR Government.

X. COMPREHENSIVE ANTI-DISCRIMINATION LEGISLATION

37. As explained in the supplementary report, the Hong Kong Government fully supports the principle of equal opportunities and is committed to the elimination of all forms of discrimination.

38. The BORO does indeed already prohibit discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. But while the BORO binds the government and public authorities, it does not regulate relations between private persons. In particular, it does not protect one person from being discriminated against (as described above) by another person. This is because it has been considered that the protection of the rights of one person against infringement by another is best achieved through specific legislation, i.e. legislation aimed at a specific and established abuse. In the particular field of protection against discrimination, the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance in 1995 are instances of specific legislation introduced where a need for such legislation and widespread community support for it, had been shown to exist.

39. As noted in the supplementary report, anti-discrimination legislation is a new area of law in Hong Kong which has far-reaching implications for the community as a whole. The Hong Kong Government accordingly maintains its view that a step-by-step approach - allowing both the government and the community thoroughly to assess the impact of such legislation in the light of experience - offers the most suitable way forward.

40. It is against this background that the Hong Kong Government has now conducted four discrete studies of discrimination - on the ground of family status, on the ground of sexual orientation, on the ground of age (in the context of employment) and on the ground of race - to identify the extent of problems in these areas and the options for addressing them.

41. As stated in paragraph 19 of the supplementary report, the studies on family status and sexual orientation were completed early in 1996. The results have now been evaluated and the necessary consequential action put in train. Most respondents were in favour of legislation to eliminate discrimination on the ground of family status. Draft legislation for that purpose was therefore introduced in the Legislative Council in April 1997 and was passed by the Council on 24 June. It has now been enacted as the Family Status Discrimination Ordinance. Divergent views were received on legislating against discrimination on the ground of sexual orientation. However, there was unanimous support for the use of educational means to address the issue and in June 1996, in the light of those views, the Hong Kong Government decided that equal opportunities for sexual minorities should be promoted by administrative measures.

42. The study on age discrimination, which the supplementary report indicated was still in progress when that report was submitted, was completed

in August 1996. Of the 68 submissions received, 25 supported the option of legislation, 11 supported the option of public education and 16 supported a combination of public education and legislation. In October 1996, the Hong Kong Government announced that, in the light of such divergent views, it would be prudent and appropriate to deal with the subject through a sustained programme of publicity, public education and self-regulation. The programme, which commenced early in 1997, includes, among other things, a series of Announcements in the Public Interest (APIs) broadcast on television and radio and the publication of practical guidelines for employers. The first series of APIs, which were broadcast on television in March 1997, called on employers to consider ability, not age, when recruiting staff or considering them for promotion or other career development opportunities. A second series, focusing on employment opportunities for younger persons, is now under consideration. The practical guidelines will incorporate comments received from employers, employees and other interested parties. They will advise employers how they might eliminate age discrimination in a wide range of employment situations, including recruitment, advertising, employment agency services, selection, promotion, training, redundancy and retirement. Further ideas under consideration include information leaflets and other types of publication targeted at selected sectors of the community.

43. As regards racial discrimination, the study was publicly launched in February 1997, when the Hong Kong Government put out a consultation paper seeking the views of the public on the issue. The consultation ended on 30 April. Some 250 submissions were received. About 80 per cent expressed the view that legislation against racial discrimination was unnecessary or undesirable, at least at present. They considered that racial discrimination was not prevalent in Hong Kong and that, if legislation were enacted, it could lead to vexatious litigation and hence engender resentment by the majority population against the ethnic minorities. In the light of these findings, the Hong Kong Government took the view that it should not proceed with legislation. Instead, this issue should be addressed administratively, through such measures as enhanced public education with a special emphasis on racial questions.

44. Paragraph 19 of the supplementary report referred to the intention of some members of the Legislative Council to introduce "members' bills" on various aspects of discrimination. One such bill - passed on 11 June - amended the Sex Discrimination Ordinance and the Disability Discrimination Ordinance in various respects: it empowered the courts to order re-employment for persons dismissed from employment on grounds of sex or disability; it removed the monetary ceiling on damages in proceedings in relation to employment matters; it included an express provision empowering the Equal Opportunities Commission (EOC) to bring judicial review proceedings; and it provided that the time taken by the EOC in attempting to bring about conciliation would not count towards the limitation period for bringing proceedings.

XI. WORK OF THE EQUAL OPPORTUNITIES COMMISSION

45. As explained in paragraph 22 of the supplementary report, the Equal Opportunities Commission (EOC) was formally established on 20 May 1996. It commenced operation on 20 September 1996. One of its statutory functions is

to keep under review the working of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance and to submit to the Governor of Hong Kong such proposals for amending the two Ordinances as it may consider necessary. The Commission is the primary executive body for the implementation of the two Ordinances. It handles complaints lodged under them and encourages conciliation between the parties in dispute. Where complaints cannot be resolved, the Commission may provide legal or other forms of assistance to those aggrieved.

46. In the course of its first year, the Commission has developed codes of practice to help employers and employees understand the new laws and how these affect their day-to-day working relationships. The codes are written in plain, non-legalistic language and were formulated after extensive consultation. After having been endorsed by the Legislative Council, they came into effect on 20 December 1996. The Commission organizes seminars to promote the codes, which have been widely distributed to major employers' and employees' organizations, women's groups and disability groups.

47. As at 19 June 1997, the Commission had received 2,952 inquiries and 188 complaints relating to the two Ordinances. It has also continued its work of public education on equal opportunities and has commissioned various training modules and launched a funding programme for community organizations to promote equal opportunities. The training modules include seminars for human resources managers, seminars for educational establishments and joint seminars with the Hong Kong Hospital Authority. The modules provide an opportunity for participants to ask questions relating to the Sex Discrimination Ordinance and the Disability Discrimination Ordinance and to exchange views on how to comply with the codes of practice and on other measures to ensure equal opportunities at the work place.

XII. INVESTIGATION OF COMPLAINTS AGAINST THE POLICE

48. The position with respect to complaints against the police as at the date when the supplementary report was submitted was described in paragraphs 11 and 12 of that report. Since then, the following developments have taken place:

(a) The introduction of improvements arising from the comparative study of overseas police complaints systems and the independent review of the Complaints Against Police Office (CAPO) procedure which were referred to in paragraphs 12 (a) and 12 (c) of the supplementary report. These improvements include:

(i) Time-limits within which CAPO must handle complaints; for example, CAPO should aim to complete the investigation of non-criminal complaints within four months;

(ii) The addition of 14 investigators to the existing CAPO teams to enhance their investigation capability and the creation of an additional team of 10 investigators dedicated to the investigation of serious complaints;

(iii) The creation of a special monitoring panel by the Independent Police Complaints Council (IPCC) to monitor closely CAPO's investigation of serious cases;

(iv) Expanding membership of the Independent Police Complaints Council (IPCC) (in order to ease the workload of IPCC members) by appointing an additional vice-chairman and three additional members;

(v) Tightening police procedures, for example, requiring a duty officer at a police station to ask suspects - in the absence of investigating officers - whether they have any complaints against the police and to report any such complaints to CAPO;

(vi) Increasing the transparency of the existing system by giving complainants more details of investigation results and making available additional information on CAPO procedures at all police stations; and

(vii) Reaching out to the community by stepping up publicity and conducting periodic attitude surveys to gauge public perception of the existing system;

(b) The introduction of legislation to make the IPCC a statutory body. On 10 July 1996, as foreshadowed in paragraph 12 (d) of the supplementary report, the Hong Kong Government introduced a bill for this purpose into the Legislative Council. At the Council's sitting on 23 June 1997, members moved major amendments which would fundamentally change the main principles of the bill. The Hong Kong Government therefore withdrew the bill;

(c) The adoption of various measures to improve public awareness of the right to complain. Information leaflets and publicity posters on the existing police complaints system have been redesigned and made available at all police stations and district offices. To improve CAPO's public inquiry service, an interactive telephone inquiry system, with prerecorded messages on matters relating to ways of lodging complaints, investigation procedures, etc. has been installed in the report rooms of CAPO's regional offices. It is understood that the IPCC will launch a major publicity campaign to enhance public awareness of this right. Among other things, the IPCC and the police will publicize their work through press conferences, radio and television. It is also understood that the IPCC and the police will more actively brief community representatives on the police complaints system and will pay careful attention to their views.

XIII. VIETNAMESE MIGRANTS AND REFUGEES

49. As at 18 June 1997, there were still about 1,950 Vietnamese migrants in the territory, of whom about 1,100 were illegal immigrants who arrived in Hong Kong after 15 June 1995 and were not covered under the Comprehensive Plan of Action, and about 850 were migrants who arrived before that date. The number of refugees was 1,000. It remains the objective to close all detention centres as soon as possible. It is understood that the repatriation of economic migrants will continue after 30 June 1997 in cooperation with the Government of Viet Nam. UNHCR continues - and, it is understood, will continue - to seek resettlement countries for the refugees.